

Keith D. Karnes, OSB # 03352
kkarnes@olsendaines.com
Douglas R. Ricks, OSB # 04402
dricks@olsendaines.com
Olsen, Olsen & Daines
1599 State St.
P.O. Box 12829
Salem, OR 97309-0829
Telephone (503) 362-9393
Fax (503) 362-1375

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

BEVERLY HILBURN,

Case No. 06-6096-HO

Plaintiff,

v.

ENCORE RECEIVABLE
MANAGEMENT, INC; ALEGIS
GROUP, LP; CITIBANK USA NA;
SEARS, ROEBUCK AND CO.

FIRST AMENDED COMPLAINT FOR
VIOLATIONS OF FAIR DEBT
COLLECTION PRACTICES ACT;
INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS; INVASION
OF PRIVACY; DEFAMATION; AND
NEGLIGENCE

Defendants.

JURY REQUESTED

JURISDICTION

1. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and pursuant to 15 U.S.C. § 1692k(d), and pursuant to 28 U.S.C. § 1367 for pendent state law claims.
2. This action arises out of Defendants' violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. ("FDCPA"), Defendants' intentional infliction of emotional distress

on Plaintiff, and the invasions of Plaintiff's personal privacy by these Defendants in their illegal efforts to collect a consumer debt, which Plaintiff did not owe.

3. Venue is proper in this District because the acts and transactions occurred here, Plaintiff resides here, and Defendants transact business here.

PARTIES

4. Plaintiff Beverly Hilburn is a natural person who resides in Oregon, and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

5. Defendant Encore Receivable Management, Inc. ("Encore") is a collection agency from Kansas, and is a "debt collector" as that term is defined by 15 U.S.C. § 1692a(6).

6. Defendant Alegis Group, LP ("Alegis") is a collection agency from South Carolina, and is a "debt collector" as that term is defined by 15 U.S.C. § 1692a(6).

7. Defendant Citibank USA NA ("Citibank") is a national bank organized under the laws of the United States.

8. Defendant Sears, Roebuck and Co. ("Sears") is a corporation organized under the laws of the State of Illinois.

FACTUAL ALLEGATIONS

9. Plaintiff owed a debt to Sears for items she purchased and charged to her Sears charge account ("account" or "the account").

10. Plaintiff became disabled and Sears Credit Protection Plan paid the entire balance of the account. (Exhibit A to original complaint).

11. Plaintiff owes no money to any Defendant.

12. Citibank has acquired the account from Sears.

13. Citibank and/or Sears sold to a trust the rights to payment of all alleged debts owed by Plaintiff.

14. Citibank has retained the right to collect payment from Plaintiff.

15. Citibank has reported to the collection agencies that Plaintiff has an outstanding balance on the account.

16. Plaintiff has disputed to every Defendant that she has an outstanding balance on the account; however, each Defendant has attempted to collect from Plaintiff after she disputed owing any amount without Defendant verifying the validity of the debt.

17. On or about December 7, 2004 Plaintiff's son suffered a heart attack in Plaintiff's home.

18. When Plaintiff was attempting to dial '911' Citibank telephoned Plaintiff.

19. Plaintiff informed Citibank that she could not speak to December 2004 collection agency because she needed to call 911.

20. After Plaintiff hung up on Citibank and before she could dial 911, Citibank called Plaintiff again to collect on the account, interfering with Plaintiff's ability to obtain medical help for her dying son.

21. Plaintiff's son died before the ambulance arrived.

22. During the following days while Plaintiff's family would visit to mourn Plaintiff's son's death, Citibank would call repeatedly with the intention of annoying and harassing Plaintiff in an attempt to collect on the account.

23. Defendant, Encore, has threatened to have Plaintiff criminally prosecuted and jailed if she did not pay the account.

24. Due to the actions of each Defendant, Plaintiff has suffered severe emotional distress.

25. Defendant Alegis has been sold, assigned or otherwise transferred the right to collect the alleged debt from Plaintiff.

26. Defendant Alegis has been informed that Plaintiff does not owe the debt it is attempting to collect, yet Alegis continues to attempt to collect the debt by assigning the debt to different collection agencies.

CLAIMS FOR RELIEF AGAINST SEARS

27. Plaintiff incorporates 1-26.

28. Sears action in assigning the account to Citibank without informing Citibank that the debt had been paid in full is negligence.

29. Sears action in reporting false information to Citibank that Plaintiff owed money on the account is defamation.

CLAIMS FOR RELIEF AGAINST CITIBANK

30. Plaintiff reincorporates 1-30.

31. Citibank's action in telephoning Plaintiff as noted above is a violation of the Fair Debt Collection Practices Act and is also invasion of privacy and intentional infliction of emotional distress.

32. Citibank's action in assigning the account to collections when it had been paid in full is negligence, invasion of privacy and a violation of the FDCPA.

33. Citibank's action in reporting to a collection agency that Plaintiff was delinquent on

her account when it was paid in full is defamation.

CLAIMS FOR RELIEF AGAINST ALEGIS

34. Plaintiff reincorporates 1-33.

35. Alegis' action assigning Plaintiff's debt to collections when it had knowledge that Plaintiff owed no debt is a violation of the FDCPA and invasion of privacy by intruding on Plaintiff's seclusion.

CLAIMS FOR RELIEF AGAINST ENCORE

36. Plaintiff reincorporates 1-35.

37. Encore's action in threatening to have Plaintiff arrested and jailed is a violation of the FDCPA including, but not limited to 15 U.S.C. § 1692d; 1692e; and 1692f.

38. Encore's action in threatening to have Plaintiff arrested and jailed is intentional infliction of emotional distress.

WHEREFORE, Plaintiff respectfully requests that judgment be entered against each defendant for compensatory damages; punitive damages; attorney fees; and costs and such other relief as the Court deem proper.

DATED December 14, 2006

Olsen, Olsen & Daines

/s/ Keith D. Karnes
Keith D. Karnes OSB # 03352
Douglas R. Ricks, OSB # 04402
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Please take notice that Plaintiff requests a trial by jury in this matter.

/s/ Keith D. Karnes

Keith D. Karnes, OSB # 03352
Douglas R. Ricks, OSB # 04402
Attorney for Plaintiff